Supreme Court, U.S.
FILED
APR 21 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-984

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

SHELL OIL COMPANY, APPELLANT

v.

THE IOWA DEPARTMENT OF REVENUE, APPELLEE

On Appeal from the Supreme Court of Iowa

JOINT APPENDIX

KENNETH S. GELLER *
Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 463-2000
Counsel for Appellant

* Counsel of Record

HARRY M. GRIGER *
Special Assistant
Attorney General
Hoover State Office
Building
Des Moines, Iowa 50319
(515) 281-5846
Counsel for Appellee

JURISDICTIONAL STATEMENT FILED DECEMBER 15, 1987
PROBABLE JURISDICTION NOTED FEBRUARY 22, 1988

TABLE OF CONTENTS *

	Page
Chronological List of Relevant Docket Entries from the Iowa District Court for Polk County	1
Chronological List of Relevant Docket Entries from the Supreme Court of Iowa	2
Shell's Petition for Judicial Review, filed December 18, 1985	5
Iowa's Answer to the Petition for Judicial Review, dated December 26, 1985	11
Stipulation of the Parties, dated December 11, 1984	13
Exhibit 7 (Shell Oil Company Iowa Income Tax—1975 through 1980)	51
Affidavit of Steven C. Stryker, dated December 17, 1984	57
Order noting probable jurisdiction, dated February 22, 1988	59

* The opinions of the lower courts were printed in the jurisdictional statement and have not been reproduced here.

IN THE IOWA DISTRICT COURT
FOR
POLK COUNTY

No. AA-952

SHELL OIL COMPANY,
Petitioner,

vs.

THE IOWA DEPARTMENT OF REVENUE,
Respondent.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
12/18/85	Petition filed.
12/30/85	Affidavit of mailing.
12/30/85	Answer of Respondent.
1/22/86	Trial Certificate.
1/30/86	Certificate of Director of Revenue.
2/7/86	Order establishing schedule for conduct of proceeding.
4/29/86	Brief of Petitioner.
5/16/86	Application for protective order.
5/27/86	Defendant's Brief.
6/25/86	Reply Brief.
10/3/86	Ruling.
10/24/86	Notice of Appeal.

IN THE SUPREME COURT OF IOWA

No. 86-1565

SHELL OIL COMPANY,
Appellant,

vs.

THE IOWA DEPARTMENT OF REVENUE,
Appellee.

RELEVANT DOCKET ENTRIES

DATE OF FILING	DATE OF SERVICE	PROCEEDINGS
10/3/86		Judgment.
10/24/86	10/23/86	Information copy of Notice of Appeal by Hall.
10/24/86		Notice of Appeal by Hall.
10/28/86	10/27/86	Cert. of Ordering C.N.T. by Hall.
10/28/86	10/27/86	Statement re Child Custody—NO by Hall.
12/1/86	12/5/86	Docket Fee $50.00 by Hall.
12/1/86	11/26/86	Notice of Election to Defer Appendix by Hall.
1/20/87	1/16/87	Appellant's appl. for ext.—brief.
1/26/87	1/23/87	Appellant's motion for protective order.
1/27/87		Order ext. Appellant due 2/19/87.
1/30/87	1/29/87	Kelly-Springfield Tire motion to file amicus brief.

DATE OF FILING	DATE OF SERVICE	PROCEEDINGS
2/4/87	CRW	Order Kelly-Springfield may file amicus.
2/13/87	2/13/87	Amicus of Kelly-Springfield by Mossman.
2/17/87	2/16/87	Appellant's appl. for ext.—brief.
2/19/87	WWR	Order ext. Appellant due 3/4/87.
3/2/87	2/27/87	Designation of Parts by Hall.
3/2/87	2/27/87	Proof Copies.
3/3/87	3/2/87	Designation by Hall.
3/12/87	Harris	Order: Motion granted in part. *All trans. & appendix to be sealed.* Motion to seal briefs denied. Any briefs previously filed may be withdrawn to give Appellant opportunity to file appendix under seal and make appropriate reference to briefs which will not be under seal. Time ext. 30 days.
3/18/87	3/18/87	Appellee—Appl. for ext. of length of brief.
3/23/87	3/23/87	Appellee—Appl. for ext.—brief.
3/23/87	AAM	Order overlength denied. File 50 pp. Appellee by 4/6/87.
3/25/87	WWR	Order Appellee due 30 days after Appellant refiles brief or time in J. Harris papers.
4/20/87	4/20/87	Proof Copies.
4/30/87	4/28/87	Appellant—Appl. for ext.—reply brief.
5/1/87	4/30/87	Motion to consolidate oral argument w/87-278.

DATE OF FILING	DATE OF SERVICE	PROCEEDINGS
5/13/87	5/12/87	Proof reply.
5/13/87		Order ext. reply due 5/18/87. Motion to consol. per. R. 22 (Md. 5/22/87).
5/20/87	5/19/87	Appendix by Hall.
5/26/87		Request to transmit rem. record.
6/1/87	6/1/87	Appellee's Brief by Griger.
6/4/87	6/2/87	Appellant's Brief by Kennedy.
6/4/87	6/2/87	Reply Brief by Hall.
6/4/87	Retd. 12/14/87	Trial Court Papers and Certified Record.
6/9/87		18 gray covers for brief by Hall.
6/9/87	Neuman	Order: Motion to consolidate oral argument granted.
8/14/87	8/13/87	Motion to delay oral argument by Appellant.
8/20/87	WWR	Order: Motion to delay oral argument denied. Court is willing to interpose argument between the two, but unwilling to remove from Sept. submission.
9/17/87		Submission Date.
10/21/87		Opinion Filed by Carter.
11/23/87	11/19/87	Notice of Appeal to United States Supreme Court.
12/2/87		Letter from Griger—costs paid.
12/21/87		Notice of filing appeal in U.S. Supreme Court.
2/25/88		Probable Jurisdiction noted in U.S. Supreme Court.

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

DEPARTMENT OF REVENUE
CONTESTED CASE

Docket No. 82-157-2A-A

Polk County District Court
Case No. AA-952

SHELL OIL COMPANY,
One Shell Plaza
P.O. Box 2463
Houston, Texas 77001,
Petitioner,

vs.

THE IOWA DEPARTMENT OF REVENUE,
Respondent.

PETITION FOR JUDICIAL REVIEW

[Filed December 18, 1985]

COMES NOW the Petitioner and states:

1. Pursuant to Section 17A.19 of the Iowa Code, Petitioner does hereby Petition the Court for Judicial Review of a Final Order of the Iowa Department of Revenue, dated December 4, 1985, in the above-named contested case proceedings involving Petitioner, a copy of

which Order is attached hereto as Exhibit "A". The Final Order herein appealed from incorporated by reference a Proposed Order of the Hearing Officer in these proceedings, dated August 26, 1985. Shell hereby appeals from each and all of the Findings of Fact and Conclusions of Law adverse to Shell set forth or inherent in said Proposed Order and Final Order of the Department of Revenue.

2. The nature of the agency action appealed from is a dispute as to the correctness of the Department of Revenue's assessment dated June 10, 1982 against Shell for corporate income taxes for the tax years 1975 through 1980.

3. The particular agency action appealed from is the Order attached hereto as Exhibit "A".

4. This Petition is filed in Polk County District Court pursuant to Section 17A.19(2) of the Iowa Code, which allows for any Petition for Judicial Review under the Administrative Procedure Act to be filed in Polk County District Court.

5. The following is a summary of the grounds upon which Shell seeks relief:

(a) Outer Continental Shelf Lands Act Issue. The Outer Continental Shelf Lands Act, 43 U.S.C. § 1333 et seq., prohibits the state taxation of Shell's Outer Continental Shelf income. Shell claims that taxation of its Outer Continental Shelf income is in violation of the Outer Continental Shelf Lands Act and the Supremacy Clause of the United States Constitution.

(b) Statute of Limitations Issue. Shell also claims that the Notice of Assessment herein in issue, dated June 10, 1982, for the tax years 1975, 1976 and 1977, was not sent to Shell within the three-year limit established by Section 422.25(1) of the Iowa Code and none of the exceptions set out in 422.25 is applicable in this

case and therefore, that portion of the assessment is barred by said statute of limitations.

Each and all of Shell's grounds for relief are more particularly set forth in its Briefs filed in the contested case proceedings had before the Iowa Department of Revenue herein and said Briefs, including the detailed statement of Shell's grounds for relief are hereby incorporated by reference.

6. The relief sought by Shell is as follows:

(a) Elimination of the additional amounts of corporate income tax assessed against Shell for the tax years 1975, 1976 and 1977.

(b) A declaration that the taxation of Shell's Outer Continental Shelf net income is in violation of the Outer Continental Shelf Lands Act and the Supremacy Clause of the United States Constitution.

(c) An elimination from Shell's pre-apportionment net income of the net income attributable to the Outer Continental Shelf and an adjustment of Shell's Iowa corporate income tax consistent therewith.

A more detailed description of Shell's requested relief, including the amounts in controversy, appears in Shell's Briefs referred to above which are hereby incorporated by reference.

7. Shell asserts that the Order of the Director of the Iowa Department of Revenue herein appealed from and each and all of the Findings of Fact and Conclusions of Law of the Hearing Officer, whose Order is incorporated by reference in the Order of the Director of Revenue adverse to Shell, are in violation of applicable constitutional or statutory provisions; in excess of the statutory authority of the Department of Revenue; in violation of applicable rules of the Department of Revenue; were made upon unlawful procedure; contain various errors

of law; are unsupported by substantial evidence in the record made before the Department of Revenue when that record is viewed as a whole; and are unreasonable, arbitrary, capricious and characterized by an abuse of discretion or a clearly unwarranted exercise of discretion, in that additional assessment of corporate income tax against Shell for the tax years 1975, 1976 and 1977 is barred by the aforementioned statute of limitations and taxation of Shell's net income attributable to the Outer Continental Shelf violates the Outer Continental Shelf Lands Act and the Supremacy Clause of the United States Constitution.

WHEREFORE, Petitioner prays that the Court grant the relief herein sought and the Department of Revenue Order appealed from be reversed and modified accordingly.

SHELL OIL COMPANY

By /s/ James W. Hall
JAMES W. HALL
Hall & Irvine
417 First Avenue SE
P.O. Box 2819
Cedar Rapid, Iowa 52406-2819
(319) 366-8016

Attorney for Petitioner

EXHIBIT "A"

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

Docket No. 82-157-2A-A

IN THE MATTER OF SHELL OIL COMPANY
One Shell Plaza
P.O. Box 2463
Houston, Texas 77001

CORPORATE INCOME TAX ASSESSMENT

ORDER OR DIRECTOR UPON REVIEW OF HEARING OFFICER'S PROPOSED ORDER

On September 23, 1985, the Iowa Department of Revenue (Department) filed an appeal to the Director of the Iowa Department of Revenue (Director), appealing the portion of the Hearing Officer's Proposed Order of August 26, 1985, which deleted paragraphs 22, 23, 24, and portions of paragraph 25 of the parties' Stipulation. On September 24, 1985, Shell Oil Company (Protestor) filed an appeal of the Hearing Officer's Proposed Order.

On October 4, 1985, the Director issued a Notice of Director's Review of Hearing Officer's Proposed Order, setting a review date of November 4, 1985. On October 14, 1985, the parties filed a Joint Agreement and Statement of Protestor and Department of Revenue.

The Director, having examined the record developed by the parties, hereby issues this Order.

STATEMENT OF THE CASE

The Director hereby adopts and fully incorporates into this Order the Statement of the Case as set forth in the Hearing Officer's Proposed Order.

FINDINGS OF FACT

The Director hereby adopts and fully incorporates as Findings of Fact the parties' Stipulation in its entirety. In addition the Findings of Fact numbered 47 through 51 in the Hearing Officer's Proposed Order are adopted and fully incorporated herein.

CONCLUSIONS OF LAW

The Director hereby adopts and fully incorporates into this Order the Conclusions of Law as set forth in the Hearing Officer's Proposed Order.

SUMMARY

The Director hereby adopts and fully incorporates into this Order the Summary as set forth in the Hearing Officer's Proposed Order.

IT IS THEREFORE ORDERED that the assessment of corporate income tax, interest, and fees as set out in the Notice of Assessment dated June 10, 1982, is affirmed. The Protestor failed to meet its burden of proof on the issues raised. With respect to the record developed by the parties, the evidence is more than substantial to support the factual and legal conclusions of this Order.

The Director's decision is the final Order of the Iowa Department of Revenue.

Issued at Des Moines, Iowa, this 4th day of December, 1985.

IOWA DEPARTMENT OF REVENUE

By /s/ G. D. Bair
G. D. BAIR
Director

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

No. AA-952

SHELL OIL COMPANY,
One Shell Plaza
P. O. Box 2463
Houston, Texas 77001,
Petitioner,

v.

THE IOWA DEPARTMENT OF REVENUE,
Respondent.

[Dated December 26, 1985]

ANSWER

COMES NOW, the Respondent, Iowa Department of Revenue, and for Answer to Petitioner's Petition for Judicial Review, states to the Court as follows:

1. Paragraph one (1) of the Petition is admitted.

2. Paragraph two (2) of the Petition is admitted.

3. Paragraph three (3) of the Petition is admitted.

4. Paragraph four (4) of the Petition is admitted.

5. For answer to paragraph five (5) and each subparagraph thereunder in the Petition, Respondent denies that Petitioner is entitled to any relief on the alleged grounds set forth and specifically denies that 43 U.S.C. § 1333 et seq. provides any basis for Petitioner's attempt, in these proceedings, to escape payment of Iowa corpo-

ration income tax on its net income associated with its Iowa activities of its unitary business. Further, Respondent denies that the three year limitation period in Iowa Code § 422.25(1) is applicable as alleged by Petitioner and, instead, the six months limitation in § 422.25(1) is applicable and Respondent's June 10, 1982 assessment was not untimely under the six months period

6. Paragraph six (6) and each subparagraph thereunder in the Petition are denied. Petitioner is not entitled to any relief that it seeks in the instant judicial review proceeding.

7. Paragraph seven (7) of the Petition is denied.

WHEREFORE, Respondent prays that, after notice and opportunity for hearing as provided by law for judicial review of a contested case proceeding, the Court affirm the final agency contested case decision.

/s/ Harry M. Griger
HARRY M. GRIGER
Special Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319
Telephone: 515-281-5846

Attorney for Respondent

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

(Title Omitted in Printing)

STIPULATION

[Dated December 11, 1984]

IT IS HEREBY STIPULATED that for the purposes of this case the following statements are made in lieu of oral testimony and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part thereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated and provided further that either party may object to statements and exhibits in this stipulation on grounds of relevancy.

STIPULATION

I

GENERAL DESCRIPTION OF SHELL OIL COMPANY

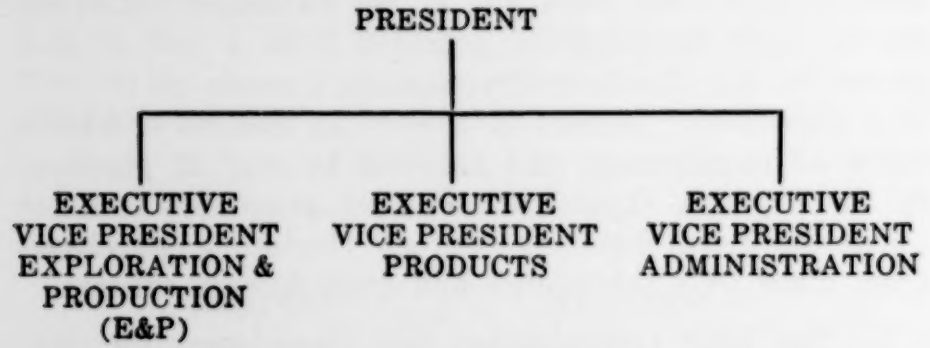
1. Shell Oil Company ("Shell") is a Delaware corporation with business operations in all fifty states and the District of Columbia.

2. During the years 1975 through 1980, Shell was the parent member of an affiliated group of corporations, the principal business of which is the exploration for,

and development, production, transportation, purchase, and marketing of crude oil and natural gas, and the purchase, manufacture, and marketing of oil and chemical products. Shell is a vertically integrated oil company which itself engages in the business activities set out above and also set forth in paragraph 4(b)(1) of the Protest and in Shell's annual 10K reports, Exhibits A, B, C, D, E, and F.

3. During the years 1975 through 1980 Shell Oil Company conducted the majority of its business activities as two separate operating organizations, the Products Organization and the Exploration and Production (E&P) Organization. Management was headed by a President. The President is the Chief Executive Officer of the Company with responsibility for the general and active supervision and management of the property, affairs, and business of the Company. There are three Executive Vice Presidents. Two of them are responsible to the President for their respective operating organizations, the Products Organization and the E&P Organization; the third Executive Vice President is responsible to the President for the staff organizations such as Legal, Tax, Finance, Employee Relations, and administers those functions as they apply to the other two organizations (E&P and Products). The E&P Organization is responsible for locating and acquiring rights to develop and produce crude oil, gas, and other natural resources. The production resulting from the E&P Organization's activities is Shell's major single supply of raw material. The Products Organization is responsible for the transportation, purchasing, and marketing of crude oil and natural gas liquids, and the manufacture and marketing of petroleum and chemical products. The Products Organization's products are refined and manufactured from feedstock (crude oil and natural gas) obtained from the E&P Organization or purchased from others. The Products Organization does not perform any functions on the Outer Continental Shelf (OCS).

The following is a diagram of the just-described portion of Shell's management which is located at Shell's offices in Houston, Texas.


PRESIDENT
EXECUTIVE VICE PRESIDENT EXPLORATION & PRODUCTION (E&P)
EXECUTIVE VICE PRESIDENT PRODUCTS
EXECUTIVE VICE PRESIDENT ADMINISTRATION

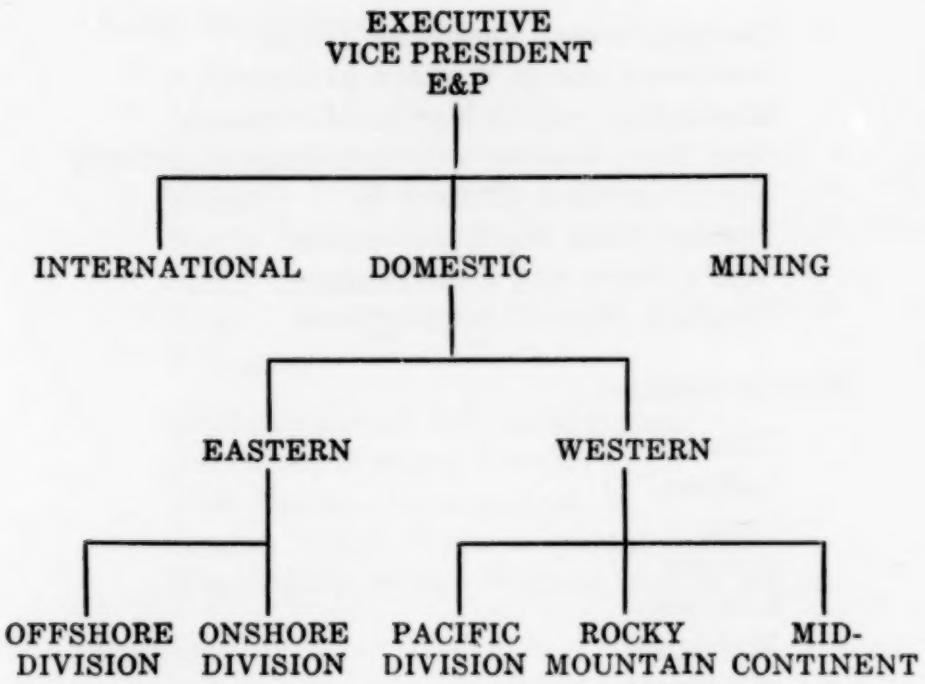
4. The Products Organization has two major operating segments; Oil Products and Chemical Products; it is headed by an Executive Vice President. The Oil and Chemical segments are each managed by a Vice President who has overall management responsibility for his business line and its sales function. There are three other segments of the Products Organization, the Operations and Technical segments which perform support functions; and the Special Projects segment which is responsible for special ventures involving the manufacture of selected petrochemical products in world-scale quantities. The Products Organization obtains part of its crude oil requirements from Shell's E&P Organization.

During 1975-80, for purposes of accounting for the transfers of crude oil production from Shell's E&P Organization to Shell's Products Organization, the transfers were recorded by Shell as sales at posted industry prices with appropriate adjustments for gravity* and transportation, but no money was paid for such intra-

* Gravity of crude oil is measured on the A.P.I. (American Petroleum Institute) scale. The lighter in weight the oil, the greater the A.P.I. gravity. Most crude oils range from 27° to 35° A.P.I. Other factors being equal, the higher the A.P.I., the better price the oil will bring.

company transfers. Such transfers at posted industry prices involved crude oil production in the OCS and non-OCS areas. See paragraph 23, *infra*. During the years 1975 through 1980 Shell was a "net purchaser" of crude oil, its E&P Organization provided from a low of 48.6 percent of the Products Organization's crude oil in 1977 to a high of 60.7 percent in 1980. The balance of Shell's crude oil requirement was acquired by way of purchase by the Products Organization. Such purchases included purchases from domestic sources (including purchases from other OCS producers) and from foreign sources.

5. The E&P Organization has three operating segments; Domestic, International and Mining. During the years at issue the domestic oil and gas segment was divided geographically between Western Operations and Eastern Operations and contained five divisions. The Offshore Division was one of the five divisions and was part of Eastern Operations and it was through the Offshore Division that Shell's Outer Continental Shelf operations were conducted. One of the other four divisions was in Eastern Operations, the other three were in Western Operations; they had primary responsibility for exploration and production in non-OCS areas in the United States. The general manager of the Offshore Division and his staff located in New Orleans, Louisiana, conceived and executed operational plans and managed the existing Shell assets on the Outer Continental Shelf (OCS). The general managers of the other divisions had similar responsibilities for, and exercised similar authority over, their respective divisions. The following is a diagram of the E&P Organization which represents the domestic segment.



The geographics areas covered by the various divisions were:

Offshore—Outer Continental Shelf;

Onshore—

Connecticut
Delaware
Florida
Louisiana
Maine
Massachusetts
New Hampshire
New Jersey
Rhode Island
South Carolina
Vermont

Alabama, Southern ½
Arkansas, Southern ½

Georgia, except Northwest corner
Maryland, except Western panhandle
Mississippi, except Northeast corner
New York, Southern tip and Long Island only
North Carolina, Eastern ⅔
Pennsylvania, Southeast corner
Texas, South and East Texas
Virginia, East of Appalachians

Mid-Continent—

Illinois
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Ohio
Oklahoma
Tennessee
West Virginia
Wisconsin —

Alabama, Northern ½
Arkansas, Northern ½
Colorado, Southeast corner
Georgia, Northwest corner
Maryland, Western panhandle
Mississippi, Northeast corner
Nebraska, except Western portion
New Mexico, Southeastern ⅔
New York, except Southern tip and Long Island
North Carolina, Western ⅓
Pennsylvania, except Southeast corner
Texas, North and West Texas
Virginia, Western edge

Rocky Mountain—

Arizona
Idaho
Montana
Nevada
North Dakota
South Dakota
Utah
Wyoming

Colorado, except Southeast corner
Nebraska, Western Portion
New Mexico, Northwestern ⅓
Oregon, except Western coastal region
Washington, except Western coastal region

Pacific—

Alaska
California

Oregon, Western coastal region only
Washington, Western coastal region only

The division's boundaries were determined principally by geographic and geological features rather than by state boundary lines.

6. During 1975-80, within the State of Iowa, Shell's principal business consisted of marketing oil and chemical products refined and manufactured by the Products Organization. There were crude oil based Shell-manufactured products sold in Iowa which were manufactured from crude oil which was commingled to the extent that the ultimate source (OCS or non-OCS) of the crude oil could not be determined with any degree of certainty. All of Shell's activity in Iowa was of such a nature that it fell within the purview of the Executive Vice President—Products. See paragraph 3, above.

7. Shell's activities as described in paragraph 2 of this Stipulation, including its activities on the OCS, constitute a unitary business, a portion of which, as stated in paragraph 6, was carried on within the state of Iowa during the years 1975 through 1980. Shell's activities are substantially similar to those described in the case of *Exxon Corp. v. Wisconsin Dept. of Revenue*, 447 U.S. 207 (1980).

II

OUTER CONTINENTAL SHELF OPERATIONS

AREA INVOLVED

8. Under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1331, *et seq.*, the Outer Continental Shelf (OCS) is defined as "all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1331(a). Section 1301 of title 43 U.S.C. is part of the Submerged Lands Act (43 U.S.C. 1301 et. seq.) and defines "land beneath navigable waters" as essentially that area within three miles of the coast line of the United States. (Texas owns 3 marine leagues into the Gulf of Mexico.) In short, the Outer Continental Shelf is the submerged land, as defined in 43 U.S.C. § 1331(a), which lies beyond the 3-mile limit. Rather than being a geographic feature, as would be inferred from its name, the OCS is a legal term describing the land extending seaward from a state's offshore boundary under water over which the United States claims economic or territorial jurisdiction. As such the OCS is not located in the State of Iowa or any other of the 50 states, so during 1975 through 1980 the actual extraction of OCS minerals did not occur in Iowa or any of the other 50 states. The OCS surrounds the continental 48 states, Alaska and Hawaii.

9. The rights to explore for, develop and produce hydrocarbons (oil and gas) from beneath the OCS were conveyed by the federal government to private enterprises by way of lease sales. During the years at issue specific tracts of OCS land were selected to be the subjects of lease sales. The size of these tracts ranged from 750,000 to 1 million acres and the leases were usually in 5,000 or 5,760 acre blocks. The lease sale was advertised in the Federal Register at least 30 days before the sale with the sale date, place and time, the tracts to be offered, and the royalty amount (usually 1/6) set by the government. Since the royalty was set at 1/6 by the government the competition in any bidding was centered on the lease bonus. In determining the appropriate bonus, Shell included a factor in its computations to account for the burden of state income taxes on any income generated by the property. The Department does not agree that this computation is appropriate to demonstrate income, if any, earned by Shell on the OCS.

Pursuant to the terms of the sale, sealed bids were submitted. Prospective bidders could bid alone or in conjunction with others. An amount equal to 20% of the bid price had to be submitted with the bid and all of the procedural requirements of the bidding procedure had to be observed. Leases went to the highest bidder, but a property might not be awarded to the highest bidder if the bid price was less than what the government considered a fair price for the area. If all bids were rejected on an area, that area was usually open for bidding in the next lease sale. On a successful bid it could take up to 30 days to announce whether the tract had been awarded, but the announcement usually followed within two weeks of the opening of bids. Thereafter, the winning bidder had 30 days to submit the 80% of the bid price not deposited with the bid along with the first years' rent.

The successful bidder received an oil and gas lease pursuant to the terms advertised in the announcement of the sale. Generally, the terms of the lease provided for a 1/6 royalty and gave the successful bidder the exclusive right to explore, develop, and produce petroleum from beneath the area awarded. The initial term (that time period during which actual extraction of gas or oil must begin) was usually five years. There was generally a rental provision of $3 per acre per year. Rent was to be paid each year in advance during the initial five year period or until the start of production; after production started the rent would be paid in the form of a royalty based on production.

The term of the lease was to run for as long as there was production; absent production the lease would expire at the end of the five year initial term. The lease would of course terminate on abandonment or surrender by the leasee. Upon termination of the lease for any reason, the structures built thereon were to be removed and any wells to be plugged and abandoned in accordance with government regulations.

The leasing procedure for OCS leases is different from onshore leasing procedure. On land large lease areas can be acquired only where there are large individual or corporate landowners or where a number of smaller parcels of land can be assembled. In the face of competition for mineral properties it is extremely difficult to assemble a large block of small lease areas. On land the terms of the lease will vary depending on the bargaining positions of the parties, and allowable time prior to production usually will be shorter than that allowed for OCS leases.

Shell has onshore leases or owns land from which it extracts oil and gas and which is not part of the OCS. Shell was and is constantly exploring for oil and gas in non-OCS areas.

EXPLORATION

10. The following description sets out Shell's activities pursuant to the OCS leasing procedures in effect during the years at issue. These leasing procedures pertain to Shell's leasing of mineral rights on government lands in the OCS from the Federal government. The Offshore Division's (Offshore) activities with respect to an offshore lease usually commenced with a response to a government call for information regarding tracts set out in the Government's plan for leasing in a specific geographic area. The call for information usually occurred about two years before the tracts in question were to be the subject of a lease sale. The response to the call for information was an outline of a large general area of interest that Offshore would like to see come up for sale. Prior to the initiation of area-wide offshore sales in 1983, each prospective bidder would nominate individual tracts and only those tracts that received more than one nomination were put up for sale. In area-wide sales all the tracts in a defined area are put up for sale so a bidder does not have to wait until at least one other bidder also recognizes the hydrocarbon potential under a tract before it is put up for lease. In the years at issue (1975-80) the areas of interest were identified by actual lease block and by relative degree of desirability of the area; present practice is to describe the areas of interest by general geographic location.

11. Prior to the call for information, Offshore geophysicists would work up potential prospects using the existing seismic data relating to the general region of interest. The existing data may have contained seismic information generated in the course of Offshore's prior activities in the general area and information purchased from others engaged in commercial seismology. In addition, geophysicists would generate further seismic data in an attempt to locate geologic structures favorable to the accumulation of hydrocarbons. The additional seismic

data was acquired by specially equipped ships towing an air gun which is used to "shoot" in the areas of interest. "Shooting" consists of systematically transmitting pulses of energy (analogous to sound waves) and receiving reflected or refracted waves from the rocks below the seabed. [This differs from onshore 'shooting' in that on land the pulses of energy may be transmitted directly to the land with a device that delivers a shock to the earth's surface in the manner of a hammer, or dynamite may be used to generate the energy pulse.] Normally a one-mile grid of seismic data or profiles is obtained over the area of interest while sweeping a series of parallel lines, or lanes, in a shipborne seismic survey. The seismic profiles generated enable geologists and geophysicists, 1) to obtain a subsurface map of the geological structures, if any, underlying the area of activity, and 2) to project the distribution of sands (reservoir rock) from previous wells, if any, drilled nearby.

12. The foregoing activities were completed by approximately one year before the area of interest was planned to be the subject of a lease sale. About one year prior to the lease sale, when the sale areas were announced, the activity narrowed to the announced sale areas, and more geologic and seismic data was collected to narrow the search even further. By approximately six months prior to a planned lease sale the manpower and effort devoted to the study of specific areas or tracts increased and the number of areas which are the subject of the study decreased so that there was a greater concentration effort. The effort was principally in two areas, geologic and seismic. The geologic study dealt with defining the character of the reservoir rock; and the seismic study dealt with the determination of the characteristics of the reservoir and defining the overall reservoir structure and its complexities.

13. After the geologic and seismic data had been gathered, Offshore conducted review processes to determine which of the lease sale tracts was most promising for development and production. The potential net feet of hydrocarbons, productive area, type of hydrocarbons anticipated (oil, gas or both), recovery factors and probability of success went into calculating minimum, mean and maximum hydrocarbon volumes. These volumes along with economic considerations, such as wildcat costs and development costs went into determining which leases would be bid on by Shell.

14. After a successful bid on a lease, the lease was put into Offshore's drilling schedule on a priority basis consistent with other demands on the available money and equipment. A primary term on a lease was usually five years; so at least one well was drilled in that period of time. Since there will have been no prior production from the lease area, the first well drilled was referred as a "wildcat" well and was drilled for the purpose of determining if there was an economic quantity of hydrocarbons on the lease.

15. Wildcat wells are usually drilled from one of three types of equipment. If the well is to be drilled in 250 feet or less of water then what is referred to as a jack-up rig is used. That is, a watertight hull and platform with vertically adjustable legs is floated to the drill site; the legs are lowered until they rest on the seabed; and drilling operations are conducted from the platform. Most offshore wells are drilled with a jack-up type rig since most wells are drilled in less than 250 feet of water depth. The use of a jack-up rig could cost from $15,000 to $40,000 per day.

16. If the well is to be drilled in water between 250 and 3,000 feet deep then a semisubmersible rig is used for the drilling operations. A semisubmersible rig has a working deck similar to a jack-up rig, but it is stabilized by ballasting its pontoons and columns to a predetermined depth; anchor cables or thrusters keep the platform properly located for drilling. For wells drilled in

water in excess of 3,000 feet, a drill ship is the normal mode of drilling. The use of a drill ship could cost about $250,000 per day. The actual cost of drilling a well depends on the depth to which the well is to be drilled and the cost of the rig used. Thus the cost of a wildcat well ranges from $1 million for a 6000 foot test to $15 million for a 20,000 foot test in less than 250 feet of water. However, for a drill ship the costs could be ten times as high for equivalent depths below the sea floor.

17. If a wildcat well is successful there is often more seismic data gathered including velocity surveys. With the new data the reservoir structure is remapped. Although the seismic data acquired after the drilling of a successful wildcat well is gathered by the exploration department it is done after the well has been transferred from the exploration department to the production department both of which are in the Offshore Division of the E&P Organization. The gathering of seismic data is done by the exploration department because it has the necessary equipment and experience to do so.

PRODUCTION

18. After the potential rate of production and the potential recoverable reserves are determined, detailed engineering studies are conducted and plans are made toward the end of proposing a development program for the lease. If the program is adopted, Offshore enters into a contract to build a platform. The platform is fabricated and installed within a period of approximately six months if the property is in shallow water; a deep water project may take as long as two to three years. The average time to fabricate and install a platform is in a range of 12 to 18 months. A platform for the purpose for developing a lease may cost anywhere from $1.5 million for a platform to be used in ten feet of water to $12 million for a platform to be used in 285 feet of water and in the hundreds of millions of dollars for a platform to be used in 800 feet of water.

The OCS development procedures and costs are radically different from those practiced on land. For example, offshore operations may require that several wells that could be produced from be plugged and abandoned prior to finding the optimum placement for a platform from which the lease may be fully developed. On land there is no physical constraint that the property be developed from a relatively small area such as a platform; so wells may be drilled on 40 acre, 160 acre, or 640 acre spacing. The cost of drilling is also dramatically different. On land one might expect to encounter costs as follows:

Depth of Well	Cost
5,000 ft.	300,000-400,000
10,000 ft.	$750,000-1 million
15,000 ft.	$2 million

19. No production wells in the OCS are drilled to the installation of a platform; however, some of the exploration wells drilled in shallow water may be used for production as the property is developed. After the drill rig is installed on the platform the drilling operations begin. An 8 or 9 thousand foot well may take approximately 15 days to drill while a 17,000 foot well would take approximately 120 days. If the drilling is done in an oil field there will be production while other wells are being drilled. That is, after the first well is drilled production casing and the other equipment necessary for production will be installed, and production will start from that well. Thereafter a second well will be drilled and production equipment will be installed. Following the same pattern a third and fourth well will be drilled until the planned number of wells is completed. If the wells are being drilled in a gas field then for safety reasons all of the wells that are planned will be drilled and cased without production taking place during the

drilling activity. Then the other necessary equipment is put in place to bring the wells into production.

20. The equipment necessary to the operation of a production well includes separators, water treatment facilities, test facilities, compressors, and metering equipment. Because the fluids recovered from a well are often a complex mixture of oil, gas, and water, they must be separated into their components and treated to obtain a pipeline quality product. Several stages of separators may be used to separate the oil, gas, and the other components of the well fluid. The oil is treated sufficiently to obtain a quality acceptable to the pipeline operator servicing the platform. Similarly, the gas is treated until it is acceptable to the gas collection pipeline operator servicing the platform. Compressors are used to deliver the product to the pipeline at the proper pressure. The well fluids left after the separation of the gas and oil (mostly water) are run through water treatment facilities in the OCS until they meet the environmental standards required for their return to the sea.

The equipment necessary for the recovery of oil and gas offshore is substantially different from the equipment used onshore. The difference is such that downhole and well-head equipment is not interchangeable between onshore and offshore applications. There are also substantial differences between surface (above-ground) and platform equipment. The safety features and the size and configuration requirements imposed by operation on an offshore platform make it so difficult to use onshore equipment on a platform that such an occurrence would be extremely rare; and the added expense of equipment designed for offshore platform use precludes its use for onshore operations.

21. Test facilities are maintained in the OCS to ensure the quality of the crude oil delivered to the pipeline operator. And, of course, metering facilities are necessary to determine how much product is delivered to the pipeline operator. The pipeline servicing the platform may be owned by Shell or owned by an independent third party. Once the crude oil is in the pipeline it is transported to shore (continental United States) for delivery to a refinery or other manufacturing facility of either Shell or an unrelated refiner or manufacturer. The refined and manufactured products are marketed throughout the world. Most, but not all, of the crude oil extracted by Shell from the OCS wells was brought from the OCS to the continental United States. This crude oil was either refined in Shell's refineries in the continental United States, or was exchanged by Shell with other oil companies. The portion of that crude oil which was refined was either sold or exchanged. These exchanges were with other companies in the Petro-Chemical industry.

As is done with respect to crude oil, test facilities are maintained on the OCS to ensure the quality of a natural gas delivered to the pipeline operator, and metering equipment is used to measure the amount of natural gas transferred. All of Shell's OCS natural gas production is sold to pipeline companies at the producing platform on the OCS.

SHELL'S COMPUTATIONS

22. Attached hereto are copies of documents captioned "SHELL OIL COMPANY EXPLORATION & PRODUCTION SCHEDULE 'E'" for each of the years 1975-1980. They are marked as Exhibits 1, 2, 3, 4, 5, and 6 respectively. These documents are business records prepared in the normal course of Shell's business on an ongoing basis for various purposes and are computations of the equivalent of what Shell's net OCS income would be for federal income tax purposes if computed for that segment of Shell's business, according to Shell. The Schedules 'E' show the value of OCS production less related expenses (including the costs of negotiating the at-the-

platform sales of OCS production), computed in the manner described below. Shell offers these exhibits into evidence. The Department does not agree that these exhibits in any manner properly reflect Shell's net income from any source or segment of Shell's business and considers them to be irrelevant to any issue in this case and objects to Shell's offer on grounds of relevance only. (The brackets around the figures above line 14 in Exhibit 3 and above line 16 on Exhibit 4 do not denote negative income according to Shell. As one can see from looking at Exhibits 1-6, the manner in which the documents are prepared by Shell in the ordinary course of business is rather rough. For example, they are partially hand written. To aid in review a typewritten copy of each Schedule 'E' is attached to the handwritten copy.) None of Shell's refining and marketing activities occur on the OCS. None of Shell's refining and marketing expenses, or the amount of revenue from sales of refined petroleum or manufactured chemicals are included in the Schedules 'E'.

23. The following sub-paragraphs are explanations by Shell of the entries on the Schedules 'E'. The numbers of the sub-paragraphs correspond to the line numbers set on Schedule 'E' for the year 1975. The lines numbers, 01, 02, etc., may vary from year-to-year but the description of the terms set out on any line is the same for each of the years 1975-1980. The Department does not agree that such explanations and the numbers on Schedules 'E' show the net income, if any, that Shell derived from the OCS. After the following explanation of each of the Schedule 'E' entries, additional explanation of the Schedule 'E' documents is made in paragraph 24.

Line No. 01 Crude Oil & Lease Condensate

The entry on this line is determined by taking the volume of production, as metered (explained below), and

multiplying that volume by the current industry posted price for that grade of crude oil at the onshore delivery point less the transportation expense. For example, assume

crude oil to be delivered at—Gibson, Louisiana

Gibson posted price—$28.85/bbl

transportation expense (platform to Gibson)—$.35/bbl

then the price used to determine the platform value of the crude oil would be $28.50. The posted price is a written statement of crude oil prices circulated publicly among sellers and buyers of crude oil in a particular field and generally in all market areas (OCS and non-OCS) in accordance with historic practices, and generally known by sellers and buyers within the field. The posted price changes periodically depending on various market conditions. During the years at issue Shell's OCS crude oil prices were subject to price controls under the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §§ 751-760h. By historic practice and by statute, all sellers of crude oil must offer that crude oil at the posted price to all buyers without discrimination. The posted price is a price that must be paid to everyone from whom Shell purchases oil at a given location, and the price at which Shell would have to sell, if it sold oil from its wells. During the years in question there were some Shell sales of crude oil. However, Shell required amounts of crude oil in excess of all of its own production and purchased additional requirements from others. See paragraph 4, *supra*. A common occurrence of a Shell oil purchase on the OCS is the situation where Shell is engaged in a joint venture with other oil companies. Those companies may choose to sell their production to Shell rather than take it from the platform and attempt to transport it to a refinery.

The posted price less transportation expense was also used to compute the royalties to be paid to the federal government on oil well leases. The normal government royalty is 1/6 of the volume, determined as outlined below, times the applicable industry posted prices adjusted for gravity and transportation (adjusted posted price) for the time period involved. The proper accounting for the royalty payments is assured by the Mineral Management Service (MMS) which is a bureau of the Department of the Interior and falls under the authority of the Assistant Secretary of the Interior—Energy and Minerals. Within the MMS, the Associate Director for Royalty Management is responsible for the collection of royalties and for any audits of the royalty payments relating to Federal oil and gas leases. 30 U.S.C.A. § 201.100. For the years at issue Shell's royalty payments were audited by the MMS itself (1975 and 1976) and by the accounting firm of Alexander Grant on behalf of the MMS (1977-1980). The royalty payment is sometimes adjusted upward by the Mineral Management Service (MMS) of the Federal government which has the right to set the price and may or may not follow the adjusted posted price for royalty calculation. However, the royalty has never, to anyone's recollection, been adjusted downward; that is, Shell's value of production from the OCS for royalty computation purposes has always been found by the MMS or its agent to be at least the amount stated by Shell. A recently completed audit for the seven year period 1977-83 indicates maximum adjustment of less than .05% (five one-hundredths of one percent).

The prices used to compute the crude oil and lease condensate revenue on Line No. 01 of Shell's Schedule 'E' have always been those which would be paid to a third party if Shell were purchasing third party oil at the platform, i.e., the posted price less transportation expense. That is the ordinary and accepted industry practice used to value production. The purchase price of

crude oil and condensate is given to the E&P Accounting Department (which Department made the initial entries on the Schedule 'E's under the "Outer Continental Shelf" column) by the Raw Material Supply Department of Shell's Products Division which informs E&P Accounting of the price to be used.

The second element of the computation of the value of crude oil and condensate production on Shell's Schedule E was the volume. The volume was determined by metering and sampling. On the first of any month at 7:00 a.m., or as close thereto as possible, the metering devices at all transfer points were read to determine the volume transferred for the month. The meter is the custody transfer point and it is at that point that the quality of the crude was also required to be tested. The quality of the oil must be less than three percent BS and W (Basis Sediment and Water). If the posted price at transfer was in effect for the entire month, then the first of the month meter reading would be sufficient. If the posted price changed during the month then the meter would be read at the time the posted price changed, or as close to that time as possible. Generally that time frame would not vary by more than a few hours either side of the change in the posted price and no matter what time the reading was made that meter reading controlled in determining the amounts transferred at the posted prices.

The amounts shown on Line 01 of each of the Schedule E documents are equal to the appropriate volume measurements multiplied by the appropriate posted prices, as adjusted for gravity and transportation, for the crude oil and condensate produced by Shell on the OCS for each of the years in question. The amounts on line 01 which involve transfers of crude oil from the E&P Organization to the Products Organization do not involve actual transfer of cash payment. *See* paragraph 4, *supra*. The amounts shown on line 01 do not include crude oil actually purchased by Shell from other OCS producers.

Line No. 02 Natural Gas

All of the natural gas produced on the OCS (less that consumed in operations on the OCS) is purchased by gas transmission companies. The gas is measured by a "constant measuring device" which determines the volume of the flow of gas and the quality of the gas as it is transferred. The price of the gas is determined by contract in compliance with federal government regulation. All gas prices are regulated under the Natural Gas Policy Act or some similar act. Line 02 on each of the Schedule E's represents the dollar amount of cash revenue received by Shell for the natural gas produced on the OCS.

Royalty payments on natural gas are made to the Federal government under the same circumstances and subject to the same audit procedures that apply to OCS crude oil.

Line Nos, 03, 04, 05, 06 Gas Processing

Since the form for the Schedule 'E' is also used for areas other than the OCS (see paragraph 24, below) a format amenable to a range of activities is used. These lines accommodate the computation of income by Shell derived from gas processing operations. There was no gas processing revenue on the OCS because there were no gas processing plants located there. Gas processing is strictly an onshore operation.

Line No. 07 Less Own Gas to Plants

When natural gas is produced a portion of it contains impurities (water and excess hydrocarbon liquids). That portion is sent to onshore gas plants for processing. Such plants are owned either by Shell, by Shell and joint venturers, or are owned entirely by entities other than Shell. Regardless of the ownership of the gas plant, the processed gas (gas which has had impurities and hydrocarbon liquids removed) is delivered to a pipeline company at a contract price. The hydrocarbon liquids (products of processing the gas to contract specifications) are divided between the leaseholder and the plant (a common arrangement is 60% to the plant and 40% to the lease from which the gas was produced). The amount stated on Line 07 is the value of the liquid hydrocarbons attributable to the lease. The value of the hydrocarbon liquid is included in Line 02 as gas revenue because it is a value upon which the royalty must be computed. The value of those liquids is also included as revenue of the gas plant; so the OCS gas revenue (Line 02) must be reduced in order to avoid overstating total company revenue. Line 07 states revenue attributable to gas produced on the OCS.

Line No. 08 Prepaid Gas Sales

There were no prepaid gas sales of gas extracted by Shell on the OCS.

Line No. 09 Prepaid Water Sales

Revenue from water sales is attributable to wells that are drilled and hit water inadvertently or wells that are drilled for the purpose of finding water that may be used for secondary recovery operations. The revenue would be generated by sales of water to local water systems. There were no sales, prepaid or otherwise, of water located in the OCS.

Line No. 10 Other Production Department Revenue

This revenue is generated by the rental to pipeline companies of space on the platform. Such space is used by the pipeline companies to place compressors and metering facilities. The pipeline companies own the meters and they must have compressors to transfer the purchased product at pipeline pressure. The amount shown on this line on each of the Schedule E's is the amount of cash received by Shell for such rental.

Line No. 11 Other Gas Department Revenue

This revenue is attributable to the operation of some portions of pipeline. These portions of pipeline are the type operated by a gas producer in order to get gas to the trunk line that serves his area of the Gulf of Mexico. The revenue is generated by transmitting the other joint venturer's gas or by picking up gas from other platforms to be transported to the pipeline companies' main line. The business procedure is to purchase the gas from others who wish to transmit their production to the trunk pipeline and then to sell the gas down the pipeline at a higher price which reflects a transportation differential. For the years in question there was no such revenue.

Total Revenue

The amounts set out on the unnumbered line captioned "Total Revenue" on each of the Schedules 'E' for 1975-1980 are the total amounts that, according to Shell, Shell's OCS production would have yielded on the OCS market. According to Shell, a ready market existed for Shell's OCS production which market would not have been affected by Shell's sale of all of its crude oil. The revenue figures set out on the Schedule 'E' are the same revenue figures reported to the Mineral Management Service of the Federal Government and are subject to audit by the MMS. For 1975 and 1976 an audit was conducted by the MMS. For 1977 through 1980 (and for later years not here at issue) the stated revenue figures were audited for the MMS by the firm of Alexander Grant, an independent Public Accounting firm. After such audit, it was determined that the maximum change required for the total audit period is less than five one-hundredths of one percent (.05%) of the revenue involved. The amounts of the adjustments involved are presently at issue and those amounts are subject to being decreased but not increased. Thus the total revenue figures shown on this line of the Schedules 'E' for the

years at issue were accepted by the United States Government without any significant adjustment as the value of Shell's OCS production for those years upon which the Government's royalty for those years was based.

Line No. 12 Royalty—Crude And Condensate

The amount reflected is the 1/6 royalty paid to the federal government with respect to minerals extracted from the OCS all of which is under Federal government control. In strict theory this would be 1/6 of line 1 but differences do arise. The differences are attributable to prior period adjustments. That is, a royalty may have been overpaid or underpaid with respect to a prior period, so the amount is adjusted in the subsequent period.

Line No. 13 Royalty—Natural Gas

Same as line 12.

Line No. 14 Operating

This amount reflects the total payroll and burden (employment taxes, employee benefits), and cost of materials used in operating each OCS lease. These are all direct expenses.

Line No. 15 Well R&M And Reconditioning (Repair And Maintenance And Reconditioning)

This figure is made up of amounts for remedial work on the well. It also contains amounts spent for tubing, acid fracturing, wire line, and repairs to the wellhead and below the surface. An example of an expense item that would not fit here would be the cost of replacing the system of valves at the point where the well casing and tubing emerge from the drill hole. That item would be a capital item and any expense for it would appear under depreciation. *See* Line 29, *infra*.

Line No. 16 Production And Property Taxes and Insurance

There were no production, severance or property taxes on the OCS. In 1980 (see 1980 Schedule 'E' line 19) there is an entry for the Windfall Profit Tax which is a per barrel tax imposed by the United States Government on oil removed from a property after February 29, 1980. The number set out in line 16 is the cost of insurance, e.g., hazard insurance, and well restoration insurance for blowouts.

Line No. 17 Overhead

Direct operation, engineering and administrative support. The engineering and administrative support expenses include the OCS's prorated portion of such expenses incurred on behalf of the OCS by Shell personnel who do not work exclusively on OCS matters. The engineering and administrative personnel are located in New Orleans and Houston.

Line No. 18 Raw Material Purch. From Outside

During the years for which there are entries under this caption, Shell's Offshore Division participated in the operation of some onshore gas processing facilities. This amount reflects Shell's share of the cost of input gas purchased from other producers.

Line No. 19 Direct Plant

This amount is the direct cost of operating the gas processing facilities described in the preceding paragraph (Explanation of Line No. 18).

Line No. 20 Crude Handling

The costs of processing and handling crude oil on an OCS platform (to the extent any is done) is accounted for in the general operating costs of the platform and is included in Line 14, Operating. The cost of transferring

the crude oil through Shell's pipeline gathering system to a common carrier pipeline company is accounted for in the posted price less transportation expense which is recorded as payment for the crude oil. Shell owned the pipeline gathering system used to transport some of its crude oil from the platform to the common carrier pipe line company. A portion of Shell's OCS crude oil was moved to the common carrier pipeline through gathering systems owned by other companies, and any expense involved was reflected in the price paid for Shell's crude oil by the other company. Shell's gathering system was not used exclusively to carry Shell's production; crude oil purchased from others was also transported in the gathering system. Although the gathering system was located on the OCS, Shell did not account for the income or loss of that portion of its business as part of the OCS. The income or loss relating to that portion of Shell's business in any year was not significant according to Shell compared to total OCS or total Shell income.

Line No. 21 Miscellaneous Production Department Expense

These expenses are categorized as miscellaneous expenses because it is undesirable to include them in operating extraction costs. They are of such a nature as to be storm related, e.g., hurricane evacuation expenses; abnormal loss; and damage such as a building blowing up or being destroyed by fire. These are items that are beyond the control of the management charged with the responsibility for the profitability of a particular area. Accordingly, Shell does not include these expenses in the category of expenses by means of which management performance is evaluated. These are direct expenses attributable to a particular well.

Line No. 22 Miscellaneous Gas Department Expense

There are no such expenses on the OCS because there is no gas processing on the OCS.

Operating Cash Income

This figure is the net of the stated Total Revenue (see explanation, *supra*, between Lines No. 11 and Line No. 12) and the expenses set out on Lines No. 12 through 22. This does not represent an actual payment of cash from Shell's Products Organization to Shell's E&P Organization.

Line No. 23 Exploration Expense

These expenses include such things as the cost of operation of a seismic vessel, and the expense of having geologists read and analyze the seismic record. This expense includes an OCS prorated portion of exploration expenses incurred by Shell personnel not working exclusively on OCS matters.

Line No. 24 Land Expense

This expense includes the cost of surveys and the preparation of the bids filings necessary for lease sales. This expense includes an OCS prorated portion of land expenses incurred by Shell personnel not working exclusively on OCS matters.

Line No. 25 Lease Rental Expense

This is a payment by Shell to the Federal government for the purpose of keeping each OCS lease in effect prior to its development.

Line No. 26 Research

This involves research and technical experiments involving new techniques in exploration and production. This is the OCS's prorated portion of Shell's research expenses.

Line No. 27 HO (Head Office) Miscellaneous

OCS prorated portion of miscellaneous corporate expense. This included such items as executive compensa-

tion, contributions to the Shell Company Foundation, operation of company aircraft and state franchise taxes.

Line No. 28 Depletion

This is the amount allowable under federal income tax law as a deduction for depletion on Shell's OCS properties.

Line No. 29 Depreciation

This is the amount allowable as a deduction under federal income tax law for depreciation of Shell's OCS assets. This is the OCS's prorated portion of Shell's depreciation expense.

Line No. 30 Intangible Amortization

This amount is the amortization of capitalized intangible drilling costs. For federal income tax purposes a taxpayer is allowed to deduct in the year incurred certain expenses related to the drilling of, and the installation of certain equipment in, an oil or gas well. These amounts are commonly referred to as intangible drilling costs or IDCs. Accounting principles require that such amounts be capitalized and recovered over the life of the well as oil or gas is produced. Accordingly the 'book' amount will be -0- and the 'Federal Basis' amount will be that amount of IDC incurred in OCS operations. [Compare Line No. 30 with the Line captioned "Intangible Development Costs per Tax."]

Line No. 31 Exploration Dry Holes

These are the costs of wildcat wells described in the narrative description of the OCS operations under exploration. The cost reflected is the direct cost of drilling the hole during some of the years in question. These amounts were treated as immediate expenses.

Line No. 32 Reversal

In the years 1975-1977, the costs of Exploration Dry Holes [Line No. 31] were expensed as incurred, but if the well proved productive the prior expenses were reversed and put into a capital account. For 1978 and later years the accounting practice was to expense the cost of Exploration Dry Holes only after determining that such a well would not be productive. Thus there is no Reversal for 1978-80.

Line No. 34 Amortization

This reflects amortization of Shell's non-producing OCS leases.

Line No. 35 Surrender

This amount reflects losses allowable under the federal tax law for the surrender of OCS leases. These amounts are attributable to leases from which there was no production.

Line No. 36 Abandonments And Retirements

This amount reflects losses allowable under the Federal tax law for the abandonment of leases and/or retirement of equipment used on a lease. These amounts are attributable to leases from which there was production.

Line No. 39 PDET Dry Holes [Production Department Exploratory Test]

This is the cost of wells drilled for the purpose of determining the boundaries of the reservoir.

Line No. 40 Net Income Before F.I.T.

This is Shell's computation of Shell's taxable income for the OCS segment of Shell's business computed, according to Shell, pursuant to Federal income tax laws

and regulations as if its entire business had been limited only to OCS activities. The Department does not agree that Line No. 40 constitutes a computation pursuant to Federal income tax laws and regulations. Shell has made the same computations as are on the Schedule 'E' Exhibits with respect to some of its non-OCS production, e.g., computation of income for state tax purposes in Mississippi and Oklahoma.

24. The Schedule 'E' is a document prepared in the normal course of Shell's business by the E&P Accounting Office and the Federal Income Tax Department of Shell Oil Company for use by Shell's State Income Tax Department. During the years at issue Schedules 'E' were prepared for Mississippi, Oklahoma, and the OCS as well as several other areas. The entries made on the Schedule E consist of dollar amounts entered under the columns captioned "Schedule 'M' ", "Outer Continental Shelf", and "Federal Basis" (or "Tax Basis"). The Schedule 'E' amounts are used to calculate royalties paid to the Federal government on OCS leases and are used in the calculation of the OCS depletion deduction on Shell's income tax returns. Similar Schedules 'E' are used also to calculate depletion deductions for non-OCS areas which are included on Shell's income tax returns.

The Schedules 'E' attached only apply to the OCS and therefore do not purport to show the entire amount of Shell's federal or state taxable income for any taxable year. Although Shell contends that the Schedules 'E' show the equivalent of net OCS income for Federal income tax purposes for each year involved, Shell does not, for Federal income tax purposes, compute a federal taxable income solely for the OCS, nor is Shell required to do so.

The initial entries made on the Schedules 'E' are entered under the column captioned "Outer Continental Shelf". They are taken from what is known as the E&P

Black Book, document prepared by the E&P Accounting Office for the purposes of:

a) Providing an internal management tool for the determination of the effectiveness of the management personnel of a given segment of Shell's business;

b) Determining segment income for Shell's purposes for publication in Shell's annual reports;

c) The preparation of state income tax returns for Oklahoma and Mississippi. Shell is required by those two states to compute a "net income" attributable to these two states pursuant to the state's requirement that a computed "production income" be allocated.

The dollar amounts computed by Shell and entered on the Schedule 'E' under the "Outer Continental Shelf" column are "book" numbers, that is, the amounts entered in that column represent Shell's computed amounts of income and expense without making any adjustments which are required to be made for a particular entry for tax purposes when preparing and filing Shell's federal income tax return. The "Federal Basis" column of the Schedule 'E' represents the OCS "tax" numbers for each entry, after adjustments have been made by Shell when preparing and filing Shells' Federal income tax return. The Schedule 'M' column of the Schedule 'E' documents reflects Shell's computed difference, if any, between the "Outer Continental Shelf" columns and the "Federal Basis" columns for a particular entry. Thus, the amounts shown on line 40 under the "Federal Basis" column of the 1975 Schedule 'E' and on comparable lines for 1976-80, are, according to Shell, the equivalent of net income before Federal income tax of Shell's OCS operations determined as if the OCS Federal taxable income was computed for that segment of Shell's business for

each of those years. The Department does not agree that such computations are the equivalent of Shell's net OCS income for Federal income tax purposes as alleged by Shell. See paragraph 22, *supra*.

25. Attached hereto and marked Exhibit 7 are computations by Shell of Shell's Iowa income tax assuming: (1) Shell's total value of production (Revenue), as computed by Shell, from the OCS was excluded from Shell's Iowa pre-appointment net income base (Exhibit 7, pages 1-6), and (2) only "net OCS income" as computed by Shell and shown on the Schedules 'E' for each year in question was excluded from Shell's pre-apportionment net income base (Exhibit 7, pages 7-12). Exhibit 8 attached hereto shows Shell's computed Everywhere Gross Receipts and Shell's computed OCS Total Value of Production for 1975-80. The Department does not agree that Shell's computations on Exhibit 7 represent "net income" or "revenue" from the OCS and does not agree that Exhibit 8's computed OCS "total value of production" can be used by Shell for any Iowa income tax purpose.

Shell claims that the amount of "Total Revenue" set forth on the unnumbered line after Line 11 on the Schedules 'E', and shown on Exhibit 8 as "OCS Value Of Production" for each of the years in question should be excluded from Shell's Iowa pre-apportionment net income for purposes of computing Shell's Iowa income tax liability for each of said years by reason of the provisions of the OCS Lands Act, 43 U.S.C. § 1333(a)(2)(A) and (a)(3). If that was done the amount excludable from Shell's Iowa pre-apportionment net income for each year in question and the amount of refund due taxpayer as computed per Exhibit 7, pages 1-6, for each year in question would be as follows:

Year	Total OCS Value of Production Per Schedule 'E'	Amount of Refund Due Taxpayer per Exhibit 7, pp. 1-6
1975	484,829,200	127,850
1976	526,193,100	70,051
1977	625,009,500	266,432
1978	727,485,804	358,624*
1979	875,965,196	550,496
1980	1,379,129,782	504,750*

Shell has not filed a claim for refund with the Department of Revenue for any of the above years.

In the alternative, Shell claims that by reason of the same statutory provisions the amounts shown on Line 40 under the "Federal Basis" column of the 1975 Schedule 'E' and on the comparable lines for 1976-80 should be deducted for each year involved from Shell's Iowa pre-apportionment net income for Iowa income tax purposes if Shell prevails on the OCS issue. If that was done the amount excludable from Shell's Iowa pre-apportionment income for each year in question and the amount of tax in dispute, as shown on Exhibit 7, pages 7-12, for each year in question would be as follows:

Year	OCS Income Computation Per Schedule 'E'	Amount of Tax in Dispute Per Exhibit 7, pp. 7-12
1975	$ 92,233,400	$41,370
1976	150,652,400	62,511
1977	71,086,000	23,460
1978	1,126,396	(8,612)
1979	195,351,771	71,589
1980	316,235,922	85,839

With respect to tax years 1975-77, Shell is also claiming that no additional tax is due at all because the Department of Revenue assessment for those years is

* Amount of refund claimed is limited by the amount of credits and payments set out on line 12 of Exhibit 7.

barred by the statute of limitations. See III hereof, *infra*, and Protest filed herein. Therefore, the above amounts of disputed tax for 1975-1977 would only be applicable for those years if Shell does not prevail on its statute of limitation argument for those years.

The unnumbered line captioned "Total Revenue" set out on each of the Schedules 'E' is Shell's computation of total revenue associated with Shell's OCS production for each of the years 1975-80 as depicted by the sum total of lines 01 through 11. It does not, however, take into account Shell's sales of products refined from OCS production. Shell's refining and manufacturing processes applied to OCS—produced minerals always occur in non-OCS areas in the continental United States.

Shell files tax returns with every state (45 states and the District of Columbia) that has an income tax or a franchise tax measured by income. With the exception of Mississippi, Oklahoma, Alaska (for 1978-81), Iowa (for 1977-80) and Florida, Shell apportioned its net income to all other states (without deduction of its separately-computed OCS net income, all as computed by Shell pursuant to the procedures in Exhibit 7) on the basis of a three-factor formula. Shell, in filing state income tax returns, has never excluded its total OCS value of production from the pre-apportionment net income base pursuant to the procedures in Exhibit 7. Shell's factors for use in the three-factor formula in the years at issue are set out in Exhibit 9, attached hereto. Had Shell deducted its separately-computed OCS net income in the just-stated computation, Shell would have paid less tax in each of those states in each of the years at issue with the exception of 1978. [In 1978 the effect of the reduction of apportionable income by the amount of OCS net income would not have offset the increase in apportionable income caused by the increase in the apportionment formula percentage due to the removal of OCS property, payroll and sales from the apportionment factors.] Had Shell deducted its total OCS

value of production it would have paid less tax in every year.

Attached hereto and marked Exhibit 10 is a copy of the Department's Notice of Assessment relating to these proceedings which is dated June 10, 1982. Shell offers Exhibits 7, 8, 9, and 10; the Department objects to Exhibits 7 and 8 on the grounds of relevancy.

* * * * *

[Deleted material pertaining to state statute-of-limitations issue]

IV

THE ISSUES

43. Whether the Department of Revenue notice of assessment of June 10, 1982 (Exhibit 10), would result in the taxation of any revenues or any of the net income derived by Shell from the OCS and, if so, whether that is in violation of the Outer Continental Shelf Lands Act (43 U.S.C. § 1331 *et seq.*), and/or the Supremacy Clause of the United States Constitution (U.S. Const. Art. VI, cl. 2), and the case law applicable thereto.

* * * * *

[Deleted material pertaining to state statute-of-limitations issue]

V

RELIEF REQUESTED

47. Shell requests the following relief:

a. Elimination of the amounts assessed for 1975-1977; and

b. A declaration that the taxation of Shell's OCS revenues and/or OCS income is in violation of the Outer Continental Shelf Lands Act and the Supremacy Clause of the United States Constitution; and

c. Elimination of OCS total revenues as shown after Line 11 on Exhibits 1, 2, 3, 4, 5, and 6 (the same amounts are shown as OCS Value of Production on Exhibit 8), for each of the tax years in question from Shell's preapportionment income base and an adjustment of Shell's Iowa corporate income tax consistent therewith in the amounts shown on Exhibit 7, pages 1-6.

d. In the alternative, an elimination of the OCS net income as shown on Line 40 under the "Federal Basis" column of Exhibit 1 and the comparable lines of Exhibits 2, 3, 4, 5 and 6 (the same amounts are shown on line 1, under the "OCS" column of Exhibit 7, pages 7-12) for each of the tax years in question from the preapportionment net income base and an adjustment to Shell's Iowa corporate income tax consistent therewith in the amounts shown on Exhibit 7, pages 7-12.

48. The Department of Revenue requests the following relief:

That the Department of Revenue's assessment in the form attached hereto as Exhibit 10, be upheld in its entirety together with interest which accrues according to law. That Shell's refund claim, if it is entitled to make one, be held to be untimely.

VI

ADDITIONAL EXHIBITS

49. In addition to Exhibits 1 through 10 attached hereto, it is agreed that the Forms 10-K of Shell for the years 1975-80 to be submitted to the Hearing Officer with this Stipulation shall be admitted into evidence as Exhibits A, B, C, D, E, and F, respectively. The Iowa income tax returns of Shell for the years 1975-80 shall also be admitted into evidence as Exhibits G, H, I, J, K, and L, respectively, and submitted to the Hearing Officer with this Stipulation. It is also agreed that a certain letter dated September 10, 1980, written by Lloyd Kennedy, corporate attorney of Shell, is offered into evidence as Exhibit M by the Department of Revenue. Shell objects to the admission of said letter into evidence on

the ground of relevancy and on the further ground that said letter was written as a part of proposed settlement negotiations in a prior dispute of a similar nature and is therefore inadmissible into evidence in this case. The Department does not agree that the letter, Exhibit M, was written as a part of any settlement negotiations. It was the Department's understanding that Exhibit M set forth Shell's position at the time with reference to the OCS and was an argument as to why the Department should adhere to that position. In addition, the Department contends that an objection based on settlement negotiations is not grounds for exclusion of evidence under Iowa Code § 17A.14 (1983) and Department Rule 730 I.A.C. § 7.17(2).

* * * * *

[Deleted material pertaining to briefing schedule]

Dated December 11, 1984.

Iowa Department of Revenue

By /s/ Harry M. Griger
HARRY M. GRIGER
Special Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

Shell Oil Company

By /s/ William D. Peltz
WILLIAM D. PELTZ
Senior Tax Counsel
Shell Oil Company
Houston, Texas 77002

/s/ James W. Hall
JAMES W. HALL
417 First Ave., S.E.
Cedar Rapids, Iowa 52401

Its Attorneys

EXHIBIT 7
SHELL OIL COMPANY
IOWA INCOME TAX
1975
[Page 7]

Description (From Audit Schedule)	As Audited	OCS	Net
1. Income Per Consolidating Income Statement	780,559,118	92,233,400	688,325,718
2. b d & e	(1,607,177)	—	(1,607,177)
2. f 50% Federal Tax	780,559,118	92,233,400	688,325,718
Numerator	818,271,268	—	818,271,825
Denominator	294,164,082		294,164,082
Multiplier	(140,303,324)	(16,578,793)	(123,724,531)
Results at 50%	638,648,617	75,654,607	562,994,010
3. Income After Adjustments	43,083,811	—	43,083,811
4. Less: Total Net Allocable Nonbusiness Income	595,564,806	75,654,607	519,910,199
5. Net Income Subject to Apportionment	57,210,710	—	57,210,710
6. Business Activity Ratio:	9,855,825,457	82,278,684	9,773,546,773
Numerator	.5805%	—	.5854%
Denominator	3,457,254		3,043,554
Percent to Iowa			
7. Net Income Apportioned to Iowa	1,205		1,205
8. Add: Net Nonbusiness Income Allocated to Iowa	3,458,459		3,044,759
10. Net Income Subject to Iowa Tax	343,346		301,976
1. Computed Tax	200,000		200,000
2. Less Credits and Payments	143,346		101,976
3. Additional Tax (Over Assessment)			

EXHIBIT 7
SHELL OIL COMPANY
IOWA INCOME TAX
1976
[Page 8]

Description (From Audit Schedule)	As Audited	OCS	Net
1. Income Per Consolidating Income Statement	1,066,604,514	150,652,400	915,952,114
2. b d & e	(6,476,406)	—	(6,476,406)
2. f 50% Federal Tax			
Numerator	1,066,604,514	150,652,400	915,952,114
Denominator	1,124,395,749		1,124,395,749
Multiplier	468,870,631		468,870,631
Results at 50%	(222,385,809)	(31,410,815)	(190,974,994)
3. Income After Adjustments	837,742,299	119,241,585	718,500,714
4. Less: Total Net Allocable Nonbusiness Income	38,411,912	—	38,411,912
5. Net Income Subject to Apportionment	799,330,387	119,241,585	680,088,802
6. Business Activity Ratio:			
Numerator	62,846,606	—	62,846,606
Denominator	11,231,319,792	123,615,000	11,107,704,792
Percent to Iowa	.5596%	—	.5658%
7. Net Income Apportioned to Iowa	4,473,053		3,847,942
8. Add: Net Nonbusiness Income Allocated to Iowa	1,357		1,357
10. Net Income Subject to Iowa Tax	4,474,410		3,849,299
1. Computed Tax	444,941		382,430
2. Less Credits and Payments	240,000		240,000
3. Additional Tax (Over Assessment)	204,941		142,430

EXHIBIT 7
SHELL OIL COMPANY
IOWA INCOME TAX
1977
[Page 9]

Description (From Audit Schedule)	As Audited	OCS	Net
1. Income Per Consolidating Income Statement	876,498,358	71,086,000	805,412,358
2. a b c d & e	6,899,783	—	6,899,783
2. f 50% Federal Tax			
Numerator	884,252,856	71,086,000	813,166,856
Denominator	950,521,061	—	6,899,783
Multiplier	311,648,636		311,648,636
Results at 50%	(144,960,595)	(11,653,514)	(133,307,081)
3. & 5. Income After Adjustments and Net Income Subject to Apportionment	738,437,546	59,432,486	679,005,060
6. Business Activity Ratio:			
Numerator	65,009,337	—	65,009,337
Denominator	12,828,966,328	242,567,085	12,586,399,243
Percent to Iowa	.5067%	—	.5165%
7. & 10. Net Income Apportioned to Iowa and Net Income Subject to Iowa Tax	3,741,663		3,506,061
1. Computed Tax	371,666		348,206
2. Less Credits and Payments	328,537		328,537
3. Additional Tax (Over Assessment)	43,129		19,669

EXHIBIT 7
SHELL OIL COMPANY
IOWA INCOME TAX
1978
[Page 10]

Description (From Audit Schedule)	As Audited	OCS	Net
1. Income Per Consolidating Income Statement	703,647,701	1,126,396	702,521,305
2. a b c d & e	541,518	—	541,518
2. f 50% Federal Tax			
Numerator	703,647,701	1,126,396	702,521,305
Denominator	769,820,019	—	769,820,019
Multiplier	205,081,954		205,081,954
Results at 50%	(93,726,743)	(150,001)	(93,576,742)
3. & 5. Income After Adjustments and Net Income Subject to Apportionment	610,462,476	976,395	609,486,081
6. Business Activity Ratio:			
Numerator	83,309,117	—	83,309,117
Denominator	13,749,636,905	334,637,691	13,414,999,214
Percent to Iowa	.6059%	—	.6210%
7. & 10. Net Income Apportioned to Iowa and Net Income Subject to Iowa Tax	3,698,792		3,784,909
1. Computed Tax	367,379		375,909
2. Less Credits and Payments	358,624		358,624
3. Additional Tax (Over Assessment)	8,755		17,367

EXHIBIT 7
SHELL OIL COMPANY
IOWA INCOME TAX
1979
[Page 11]

Description (From Audit Schedule)	As Audited	OCS	Net
1. Income Per Consolidating Income Statement	1,309,966,780	195,351,772	1,114,615,008
2. a b c & g	841,799	—	841,799
2. f 50% Federal Tax			
Numerator	1,309,966,780	195,351,772	1,114,615,008
Denominator	1,391,555,550		1,391,555,550
Multiplier	498,738,174		498,738,174
Results at 50%	(234,748,243)	(35,007,345)	(199,740,898)
3. & 5. Income After Adjustments and Net Income Subject to Apportionments	1,076,060,336	160,344,426	915,715,910
6. Business Activity Ratio:			
Numerator	95,272,787	—	95,272,787
Denominator	18,358,435,310	439,985,470	17,918,449,840
Percent to Iowa	.5190%	—	.5317%
7. & 10. Net Income Apportioned to Iowa and Net Income Subject to Iowa Tax	5,584,753		4,868,861
1. Computed Tax	555,975		484,386
2. Less: Credits and Payments	673,000		673,000
3. Additional Tax (Over Assessment)	(117,025)		(188,614)

EXHIBIT 7
SHELL OIL COMPANY
IOWA INCOME TAX
1980
[Page 12]

Description (From Audit Schedule)	As Audited	OCS	Net
1. Income Per Consolidating Income Statement	1,584,428,478	316,235,922	1,268,192,556
2. a b c d & e	486,613	—	486,613
2. f 50% Federal Tax			
Numerator	1,584,428,478	316,235,922	1,268,192,556
Denominator	1,748,548,628	—	1,748,548,628
Multiplier	597,877,017		597,877,017
Results at 50%	(270,879,841)	(54,064,823)	(216,815,018)
3. & 5. Income After Adjustments and Net Income Subject to Apportionment	1,314,035,250	262,171,099	1,051,864,151
6. Business Activity Ratio:			
Numerator	100,144,891	—	100,144,891
Denominator	28,169,323,147	541,190,566	27,628,132,581
Percent to Iowa	.3555%	—	.3625%
7. & 10. Net Income Apportioned to Iowa and Net Income Subject to Iowa Tax	4,671,395		3,813,008
1. Computed Tax	464,640		378,801
2. Less Credits and Payments	504,750		504,750
3. Additional Tax (Over Assessment)	(40,110)		(125,949)

BEFORE THE
IOWA STATE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

Docket No. 82-157-2A-A

IN THE MATTER OF SHELL OIL COMPANY
One Shell Plaza, P. O. Box 2463, Houston, TX 77001

CORPORATE INCOME TAX ASSESSMENT

AFFIDAVIT OF STEVEN C. STRYKER

[Dated December 17, 1984]

STATE OF TEXAS)
) ss:
COUNTY OF HARRIS)

STEVEN C. STRYKER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. My name is Steven C. Stryker. I am employed in the Tax Department of Shell Oil Company (Shell). As General Manager and Assistant General Tax Counsel, I have as part of my overall responsibility the responsibility for the filing of the Federal Consolidated Income Tax Return, and from August, 1981 to June 30, 1984, I also had the responsibility for the filing of the State Income and Franchise Tax Returns in all states where Shell is required to file those returns.

2. I make this Affidavit in support of Shell's protest in the above-captioned matter. The information hereinafter recited is within my personal knowledge and has

been acquired by me during the course and within the scope of my employment with Shell.

* * * *

13. The computations set forth in Exhibit 7 attached to the Stipulation are true, correct and accurate computations of what the Iowa income tax liability of Shell would have been for each of the years 1975-80 assuming:

(1) Shell's total value of production (revenue) from the OCS as shown after line 11 of the Schedules 'E' was excluded from Shell's Iowa pre-apportionment net income base (Exhibit 7, pages 1-6), or

(2) Only Shell's net OCS income as shown on line 40 of Exhibit 1 or comparable lines of Exhibits 2, 3, 4, 5 and 6 for each year in question was excluded from Shell's pre-apportionment net income base (Exhibit 7, pages 7-12).

* * * * *

/s/ Steven C. Stryker
STEVEN C. STRYKER
General Manager and
Assistant General Tax Counsel

Subscribed and Sworn to before me this 17th day of December 1984.

/s/ [Illegible]
Notary Public in and for
the State of Texas

My commission expires 3/18/86

SUPREME COURT OF THE UNITED STATES

No. 87-984

SHELL OIL COMPANY,
Appellant
v.
IOWA DEPARTMENT OF REVENUE

APPEAL FROM THE SUPREME COURT OF IOWA

February 22, 1988

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.